

IC 8-23-2

Chapter 2. Indiana Department of Transportation

IC 8-23-2-1

Establishment of department

Sec. 1. The Indiana department of transportation is established.
As added by P.L.112-1989, SEC.5.

IC 8-23-2-2

Commissioner; appointment; compensation

Sec. 2. (a) The governor shall appoint a commissioner who is responsible for organizing and administering the department.

(b) The commissioner:

(1) serves at the pleasure of the governor; and

(2) is entitled to receive compensation set by the budget agency.

As added by P.L.112-1989, SEC.5.

IC 8-23-2-3

Employees; conditions of employment; highway district managers and subdistrict superintendents; chief highway engineer; bond; oath

Sec. 3. (a) The department may hire qualified individuals to carry out its responsibilities subject to the budget agency's approval under IC 4-12-1-13 and may prescribe their terms and conditions of employment subject to this section.

(b) All employees of the department whose duties require specialized knowledge or skill, acquired by professional or technical education, training, and experience:

(1) shall be employed solely on the basis of ability, taking into account their qualifications to perform the duties of their positions;

(2) shall be employed regardless of political affiliation;

(3) may not be appointed, promoted, reduced, removed, or in any way favored or discriminated against because of their political affiliation, race, religion, color, sex, national origin, or ancestry;

(4) are ineligible to hold, or be a candidate for, elected office (as defined in IC 3-5-2-17) while employed by the department, except as provided in subsection (h);

(5) may not solicit or receive political contributions;

(6) may not be required to make contributions for or participate in political activities;

(7) shall be employed on a six (6) month probationary period, with a written evaluation prepared after five (5) months of service by their immediate supervisor for the commissioner to determine if employment should continue beyond the probationary period; and

(8) shall be evaluated annually in writing by their immediate supervisor for the purpose of advising the commissioner as to whether the employees should remain in their positions.

(c) Highway district managers and subdistrict superintendents are not subject to subsection (b). A person may not be employed by the department as a highway subdistrict superintendent unless the person has received training or experience in maintaining or constructing roads, highways, and bridges. Highway subdistrict superintendents shall devote full time to the performance of their duties. Highway district managers serve at the pleasure of the commissioner but upon reassignment shall be retained in a position of equal or higher job classification within the department. However, the employee may elect to serve in the next lower job classification within the same district.

(d) The appointment or dismissal of the chief highway engineer for the department is at the discretion of the commissioner. The chief highway engineer must be a registered professional engineer and must be a graduate civil engineer or have at least ten (10) years of experience in highway engineering.

(e) All employees of the department are subject to IC 4-15-1.8 and the rules that implement IC 4-15-1.8.

(f) Subject to this section:

(1) all employees of the department are subject to demotion, discipline, dismissal, or transfer at the discretion of the commissioner; and

(2) cause for demotion, dismissal, discipline, or transfer may include but is not limited to failure to satisfactorily effectuate the department's transportation plan and work programs.

(g) The commissioner may:

(1) require an employee or agent of the department to execute and furnish a bond conditioned upon the faithful discharge and performance of the duties of the employee or agent and the accurate accounting of public funds that come into the employee's or agent's control or custody; and

(2) prescribe an oath of employment for an employee or agent of the department.

(h) Employees described in subsection (b) may:

(1) be candidates for:

(A) school board office (as defined in IC 3-5-2-45); or

(B) precinct committeeman or state convention delegate; and serve in that office if elected; and

(2) be appointed to an office described in subdivision (1) and serve in that office if appointed.

As added by P.L.112-1989, SEC.5. Amended by P.L.5-1989, SEC.77.

IC 8-23-2-4 Repealed

(Repealed by P.L.1-1991, SEC.82.)

IC 8-23-2-4.1

Department responsibilities; activities

Sec. 4.1. The department is responsible for the following activities:

(1) The identification, development, coordination, and

implementation of the state's transportation policies.

(2) The approval of applications for federal transportation grants from funds allocated to the state:

(A) from the Highway Trust Fund (23 U.S.C.);

(B) from the Aviation Trust Fund (49 U.S.C.);

(C) through the Federal Transit Administration (49 U.S.C. 5301 et seq.); or

(D) from any other federal grant that has a transportation component.

(3) The review, revision, adoption, and submission of budget proposals.

(4) The construction, reconstruction, improvement, maintenance, and repair of:

(A) state highways; and

(B) a toll road project or toll bridge in accordance with a contract or lease entered into with the Indiana transportation finance authority under IC 8-9.5-8-7 or IC 8-9.5-8-8.

(5) The administration of programs as required by law, including the following:

(A) IC 8-3-1 (railroads).

(B) IC 8-3-1.5 (rail preservation).

(C) IC 8-21-1 (aeronautics).

(D) IC 8-21-9 (airports).

(E) IC 8-21-11 (aviation development program).

As added by P.L.1-1991, SEC.83. Amended by P.L.14-2003, SEC.1.

IC 8-23-2-5

Department duties

Sec. 5. The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

(A) long range comprehensive transportation plans;

(B) work programs; and

(C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

(A) developing and recommending public transportation policies, plans, and work programs;

(B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;

(C) developing work programs for the utilization of federal mass transportation funds;

(D) furnishing data from surveys, plans, specifications, and

- estimates required to qualify a state agency or political subdivision for federal mass transportation funds;
- (E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;
- (F) serving, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;
- (G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and
- (H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;
- (6) provide technical assistance to units of local government with road and street responsibilities;
- (7) develop, undertake, and administer the program of research and extension required under IC 8-17-7; and
- (8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter).

As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.207; P.L.23-1993, SEC.20; P.L.52-1995, SEC.2.

IC 8-23-2-6

Department powers; contracts and leases with transportation finance authority; confidential documents

Sec. 6. (a) The department, through the commissioner or the commissioner's designee, may do the following:

- (1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities.
- (2) Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department.
- (3) Enter into:
 - (A) a contract with the Indiana transportation finance authority under IC 8-9.5-8-7; or
 - (B) a lease with the Indiana transportation finance authority under IC 8-9.5-8-8;
- for the construction, reconstruction, improvement, maintenance, repair, or operation of toll road projects under IC 8-15-2 and toll bridges under IC 8-16-1.
- (4) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department.
- (5) Hire attorneys.
- (6) Perform all functions pertaining to the acquisition of

property for transportation purposes, including the compromise of any claims for compensation.

(7) Hold investigations and hearings concerning matters covered by orders and rules of the department.

(8) Execute all documents and instruments necessary to carry out its responsibilities.

(9) Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to:

(A) qualify the department for; and

(B) receive;

federal government funding on a full or participating basis.

(10) Adopt rules under IC 4-22-2 to carry out its responsibilities.

(11) Establish regional offices.

(12) Adopt a seal.

(13) Perform all actions necessary to carry out the department's responsibilities.

(14) Order a utility to relocate the utility's facilities and coordinate the relocation of customer service facilities if:

(A) the facilities are located in a highway, street, or road; and

(B) the department determines that the facilities will interfere with a planned highway or bridge construction or improvement project funded by the department.

(15) Reimburse a utility:

(A) in whole or in part for extraordinary costs of relocation of facilities;

(B) in whole for unnecessary relocations;

(C) in accordance with IC 8-23-26-12 and IC 8-23-26-13;

(D) in whole for relocations covered by IC 8-1-9; and

(E) to the extent that a relocation is a taking of property without just compensation.

(16) Provide state matching funds and undertake any surface transportation project eligible for funding under federal law. However, money from the state highway fund and the state highway road construction and improvement fund may not be used to provide operating subsidies to support a public transportation system or a commuter transportation system.

(b) In the performance of contracts and leases with the Indiana transportation finance authority, the department has authority under IC 8-15-2, in the case of toll road projects and IC 8-16-1, in the case of toll bridges necessary to carry out the terms and conditions of those contracts and leases.

(c) The department shall:

(1) classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening;

- (2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division; and
- (3) classify as confidential records that are the product of systems designed to detect collusion in state procurement and contracting that, if made public, could impede detection of collusive behavior in securing state contracts.

This subsection does not apply to parcel files of public agencies or affect IC 8-23-7-10.

As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.208; P.L.2-1991, SEC.63; P.L.63-1992, SEC.3; P.L.39-1993, SEC.3; P.L.109-1993, SEC.1.

IC 8-23-2-7

Repealed

(Repealed by P.L.18-1990, SEC.299.)

IC 8-23-2-8

Repealed

(Repealed by P.L.18-1990, SEC.299.)

IC 8-23-2-9

References to certain transportation agencies as references to department of transportation

Sec. 9. After June 30, 1989, any reference to:

- (1) the transportation coordinating board (IC 8-9.5-2-1);
- (2) the transportation planning office (IC 8-9.5-3-1);
- (3) the department of highways (IC 8-9.5-4-2); and
- (4) the department of transportation (IC 8-9.5-5-2);

in any statute or rule shall be treated as a reference to the Indiana department of transportation, as established by this article.

As added by P.L.112-1989, SEC.5.

IC 8-23-2-10

Preexisting rules of certain transportation agencies as rules of department of transportation

Sec. 10. Any rules of:

- (1) the transportation coordinating board (IC 8-9.5-2-1);
- (2) the transportation planning office (IC 8-9.5-3-1);
- (3) the department of highways (IC 8-9.5-4-2); and
- (4) the department of transportation (IC 8-9.5-5-2);

filed with the secretary of state before July 1, 1989, shall be treated after June 30, 1989, as though they had been adopted by the Indiana department of transportation established by this article.

As added by P.L.112-1989, SEC.5.

IC 8-23-2-11

Application of section; surplus property; trust bid

Sec. 11. (a) This section applies to the disposal of surplus real or personal property by the department.

(b) Whenever surplus real property or personal property is disposed of by acceptance of bids, a bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

As added by P.L.336-1989(ss), SEC.22.

IC 8-23-2-12

Engineers and land surveyors; contracts; compensation

Sec. 12. A contract for professional services of engineers or land surveyors may be made on the basis of competence and qualifications for the type of services to be performed. Compensation that the department determines to be reasonable may be negotiated.

As added by P.L.18-1990, SEC.209.

IC 8-23-2-13

Notaries public; costs and expenses; powers

Sec. 13. (a) The department shall determine the number of its employees appointed notaries public and pay the expense of appointment, the premiums on the official bond of the notaries, and the cost of official seals. An employee of the state appointed a notary public may do the following:

(1) Take acknowledgments of deeds, contracts, grants, and other documents to or in which the state or a state agency is a party to or has an interest.

(2) Administer oaths to a person to a document, claim, statement, or other document to be filed with the state or a state agency.

(b) A notary public appointed under this section may not charge for the service.

As added by P.L.18-1990, SEC.210.

IC 8-23-2-14

Extension of engineering services and testing facilities to counties and municipalities; reimbursement

Sec. 14. The department may furnish on request of a county or municipality engineering service or consultation and extend the facilities of the department's testing laboratory for the testing of highway construction and maintenance materials or for any other highway purpose. When those services are rendered by the department, the county or municipality requesting and receiving the services shall reimburse the department to the extent of the actual cost of the service including salaries or personal services. When payment is made to the department by the county or municipality, the department shall receipt the payments into the accounts or appropriations from which the expenditures were made by the department in providing those services.

As added by P.L.18-1990, SEC.211.

IC 8-23-2-15

"Highway work zone" defined; use of off duty police officers to patrol highway work zones

Sec. 15. (a) As used in this section, "highway work zone" means an area where:

- (1) highway construction, reconstruction, or maintenance is actually occurring; and
- (2) notice is posted in accordance with the:
 - (A) Indiana Manual on Uniform Traffic Control Devices; or
 - (B) Indiana Work Site Traffic Control Manual;

to indicate that highway construction, reconstruction, or maintenance is occurring.

(b) The department may contract with the state police department or local law enforcement agencies to hire off duty police officers to patrol highway work zones. The duties of a police officer who is hired under this section:

- (1) are limited to those duties that the police officer normally performs while on active duty; and
- (2) do not include the duties of a:
 - (A) flagman; or
 - (B) security officer.

(c) The department shall use the money transferred to the department under IC 33-37-9-4(6) to pay the costs of hiring off duty police officers to perform the duties described in subsection (b).

(d) All money transferred to the department under IC 33-37-9-4(6) is annually appropriated to pay off duty police officers to perform the duties described in subsection (b).

As added by P.L.64-1992, SEC.1. Amended by P.L.4-1994, SEC.2; P.L.132-2003, SEC.1; P.L.98-2004, SEC.76.

IC 8-23-2-16

Repealed

(Repealed by P.L.35-1995, SEC.5.)

IC 8-23-2-17

Public hearings

Sec. 17. (a) As used in this section, "public hearing" means an assembly or a meeting by the department for the purpose of:

- (1) providing information early in the process of making decisions affecting proposed highway or bridge construction or improvement projects on a county arterial highway system or the state highway system so that the public can have an impact on the decision outcome, including a meeting in which the public is provided information, opportunity for review and comment, and an accounting for the rationale for a proposed project; or
- (2) complying with 23 U.S.C. 128 and 49 U.S.C. 1602(d) requirements in considering economic, social, environmental, and other effects of highway projects and proposals.

(b) Whenever the department holds a public hearing, the department shall allow any person an opportunity to be heard in the

presence of others who are present to testify and in accordance with subsection (c).

(c) The department, through the commissioner or the commissioner's designee, may limit testimony at a public hearing to a reasonable time stated at the opening of the public hearing.

As added by P.L.52-1995, SEC.3.